

#### Members

Rep. Jesse Villalpando, Chair  
Rep. William Crawford  
Rep. Brian Hasler  
Rep. Ralph Foley  
Rep. Mary Kay Budak  
Rep. Jeff Thompson  
Sen. Luke Kenley, Vice-Chair  
Sen. David Ford  
Sen. David Long  
Sen. Glenn Howard  
Sen. Timothy Lanane  
Sen. Samuel Smith, Jr.



## INTERIM STUDY COMMITTEE ON JUVENILE LAW AND RESTORATIVE JUSTICE

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### MEETING MINUTES<sup>1</sup>

Meeting Date:	October 13, 1999
Meeting Time:	10:00 A.M.
Meeting Place:	State House, 200 W. Washington St., Room 404
Meeting City:	Indianapolis, Indiana
Meeting Number:	3

Members Present: Rep. Jesse Villalpando, Chair; Rep. William Crawford; Rep. Brian Hasler; Rep. Ralph Foley; Rep. Mary Kay Budak; Rep. Jeff Thompson; Sen. Luke Kenley, Vice-Chair; Sen. David Ford; Sen. David Long.

Members Absent: Sen. Glenn Howard; Sen. Timothy Lanane; Sen. Samuel Smith, Jr..

### CALL TO ORDER AND OPENING REMARKS

Representative Villalpando called the meeting to order at 10:15 a.m. and reminded those present that the Committee has a two-year charge and there is no requirement to propose legislation at this time. He stated his goal that the meeting be the Committee's last for this interim session. Senator Kenley reiterated Representative Villalpando's statement and explained that the Committee's preliminary report, due to the Legislative Council by October 31, 1999, will set the stage for the Committee's work during the 2000 interim session. The Committee agreed that staff should fax the preliminary report to each member by October 30, 1999 for their review. Each member will fax a written concurrence or a request for changes back to staff.

### WITNESS TESTIMONY

**The Honorable James Payne**, Marion Superior Court, Juvenile Division, testified that what occurs in large urban settings eventually trickles down to both the suburbs and rural areas. He recommended that Committee members review the National Center for Juvenile Justice's report

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<sup>1</sup>Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

on statistics and trends in juvenile justice. He testified that there two aspects of the juvenile system: the front end (early intervention cases) and the back end (including aftercare services and recidivism rates) He stated that even after being arrested and serving time, juveniles often continue to commit offenses.

Judge Payne observed that courts used to be the place of last resort, but now they are the place of first resort. He reported that children ages 7-10 go through the booking process, and 6-year olds spend the night in detention. He suggested that options commonly used in civil cases, such as alternative dispute resolution (ADR) and settlement conferences be used in the juvenile system as a means of resolving problems before court intervention. He stated that 9,000 new children and families come in to the juvenile court system every year.

He reported that his court was awarded a grant to use the family as a change agent in child abuse and neglect cases, but noted that most counties don't have the ability to employ restorative justice because they're overwhelmed by the current system. He encouraged funding to assist counties by providing the philosophy, resources, and process. He reassured the Committee that Indiana juvenile courts do a good job dealing with juvenile offenders, and praised laws which give courts flexibility by age and disposition.

Judge Payne reported the following trends:

- offenders are getting younger every year — the average age is 13 ½ years at the time of arrest and first appearance in court;
- while overall juvenile crime is down, juvenile violent crime is up;
- the number of female juvenile offenders is on the rise;
- increases in drug use are tied to violence — kids are often used by adults in the drug trade;
- the number of middle-class kids getting arrested is increasing;
- the number of younger kids getting arrested multiple times is increasing.
- the younger a juvenile starts offending, the more serious an offender they'll be because minor crimes are a precursor to serious crimes.

Judge Payne stated that the juvenile system is not addressing the needs of some juvenile offenders and neither is adult court. There is a need for a long-term sanction and an opportunity to change behavior. He stated that juveniles placed in the adult system actually serve less time than in the juvenile system. He testified that we need a system that can address serious and repeat offenders, and that he favors the three-tiered model: juvenile, adult, youthful offender. He cited Plainfield as an appropriate facility for those who should go to a youth facility and not to a more serious adult facility like Pendleton. He suggested the Committee examine the juvenile code from other states with three-tiered systems (California, New Mexico, and Minnesota).

After stating that no aspect of the juvenile justice system works, Senator Ford asked Judge Payne what changes he would make if he had unlimited resources. Judge Payne stated that he would like a facility in which the courtroom is the least used room in the building. In this facility, he would have ADR, restorative justice, and mediation, counselors to provide early assessment and evaluation services, sufficient technology to allow for information sharing between law enforcement, the schools, welfare department, and mental health organizations. Judge Payne stated that this process would still give prosecutors discretion concerning the filing of charges and would also provide for a more balanced approach to deciding whether a juvenile should be waived to adult court. He expressed his concern about the trend toward lowering the age for waiver to adult court, and that a three-tier system would assist in the proper placement of a juvenile. He stressed that this approach embodies a significantly different philosophy than the current system. Senator Ford commented that the current adversarial system is not the best

way to handle juvenile cases, and that the civil liberty limitations placed on the system often act as a hindrance to the system.

Representative Crawford noted that 840 juveniles were sent to the Department of Correction (DOC) from Marion County, but the next 5 largest counties combined only sent 565 juveniles. Judge Payne responded that the number committed to the DOC is not accurate, because it includes juveniles who violated parole. He observed that some communities choose not to send juveniles to the DOC because they don't stay incarcerated long enough in the adult system. Judge Payne referenced a study conducted by the Hudson Institute which indicates that Marion County sends the right juveniles to the DOC.

Representative Budak stated that the number of female juvenile offenders is increasing because many 16 and 17 year old girls leave their families and start relationships with older men, which is exacerbated by the fact that there is no statutory rape law in Indiana.<sup>2</sup> Judge Payne responded that since teen pregnancy is often the result of a young girl's involvement with an older man, Indiana's statutory rape laws must be strengthened to make such cases easier to prosecute.

Senator Kenley requested Judge Payne's assistance for next year with formulating a model to deal more effectively with front end issues in the juvenile justice system, determining to what extent the juvenile code should be restructured; and selecting a model statute. Judge Payne stated that because juvenile courts currently operate as "trauma centers" where children and their families go in times of crisis, the courts often lose sight of the system after the court intervenes. He noted since juvenile offenders often go back into the same problematic home environment, home-based counselors are needed to help the family participate in the juvenile's treatment program.

Representative Foley asked how the juvenile system could be streamlined. He stated that the intent of the juvenile code was to provide a non-adversarial, informal process. Representative Foley noted that the juvenile code has been criminalized to such an extent that criminal rights are applied, further eroding the intent of the juvenile code. He commented that he would like to see the code restructured to fit its original philosophy.

Judge Payne responded that many people would like to see the concepts of a non-adversarial system and alternative avenues for adjudication melded in some way. He noted that Indiana's juvenile code was the second juvenile code enacted in the United States, and is now one hundred years old. He ended his testimony by stating that educational success is the key because it is the only thing that decreases violence.

**The Honorable Charles Pratt**, Allen Superior Court, testified that one hundred years ago the juvenile system revolved around the presumption that young people couldn't fully understand the consequences of their actions. Judge Pratt noted that studies show placing juvenile offenders in the adult correctional system doesn't work, and that there is a need to balance punishment with rehabilitation in the form of the three-tiered system. He requested that the Committee examine the statute regarding the commitment of juveniles to Boys' School (IC 31-37-19-10) because it is convoluted. Judge Pratt also noted that there is no statutory authority to suspend a juvenile's operator's license when he or she commits an alcohol-related offense. Representative Thompson stated that he will reintroduce a bill in the upcoming session which would give courts that authority.

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<sup>2</sup>In Indiana, the only crime called rape does not make any reference to the age of the victim. Child molesting under IC 35-42-4-3(a) is Indiana's equivalent of "statutory rape" since a person who has intercourse with a child under 14 commits a Class B (or A) felony even if there is consent by the "child."

Judge Pratt stated that an aspect of the juvenile code that is successful is the ability of juvenile courts to recapture jurisdiction of juvenile offenders after they have served time in the DOC. Judge Pratt noted that restorative justice provides a model which allows the private sector to provide jobs so that juvenile offenders can make restitution.

Judge Pratt asked that the Committee clarify the law requiring parental responsibility for intentional torts committed by a child, specifically whether a court order or the statutory limit controls the amount of restitution that the parent must pay, and whether a non-custodial parent can be required to pay. Judge Pratt commented that in Indiana, juvenile court judges collaborate effectively with the Indiana Association of Residential Child Care Agencies, Inc. (IARCCA) to develop outcome-based models. He stressed that outcome measurements are an extremely important aspect of juvenile justice because they help determine where a juvenile would receive the best treatment.

**Scott Newman**, Marion County Prosecutor, testified that in many ways Indiana's juvenile justice system works well, as evidenced by the number of juveniles that never come back into the system after their first offense. He emphasized secrecy, non-adversary proceedings and programming as positive aspects of the current system.

Mr. Newman reported that Marion County has implemented a restorative justice program for first time offenders using family and victim conferencing, in which both the offender and the victim bring supporters and engage in a dialogue with the help of a prosecutor who has been trained as a facilitator. He stated that the results of a study conducted by the Hudson Institute indicate an increase in victim satisfaction and program compliance by the offender, and a decrease in recidivism. He testified that this program was implemented without the need for additional legislation and praised the flexibility of the juvenile code.

Mr. Newman stated that there is a need to bring a better balance to the juvenile justice system in order to meet the goals of punishment (through incarceration), intermediate intervention (such as day reporting and probation), and prevention. He reported that a problem in urban settings is that there are no treatment options for juvenile offenders who commit serious crimes like murder. He stated that the DOC often doesn't want to take such a juvenile offender into its system and the juvenile system doesn't allow for a serious enough sentence.

Mr. Newman stated his support for the three-tiered system, and suggested that additional procedural rights and protections may be needed for the offenders at the top of the age range. He testified that such a system would help address those juvenile offenders who are not ready for adult prison, but who have committed offenses too serious to be placed in the current juvenile system.

He commented that the system is backlogged due to the lack of facilities and resources provided by the DOC. He reported that juveniles have an average of nine prior charges before being committed to the DOC, and that only 3.9% had never participated in a diversionary program. Mr. Newman stated that these statistics are further evidence that a greater range of intermediate sanctions is needed and should include day reporting, work release and short-term facilities. He supported the need for better aftercare for juveniles committed to the DOC, stating that it is an overlooked component of the system.

Senator Kenley requested that the Indiana Prosecuting Attorneys Council provide feedback to the Committee regarding what should remain and what should change within the juvenile code. He also asked for input on how an intermediate facility should be structured and who would be sent there.

In response to a question from Representative Budak about boot camps, Mr. Newman stated

that he does not favor boot camps because he wants to head off commitments to DOC. He stated that Summit Boot Camp is too short and doesn't offer any aftercare services. Representative Crawford commended Mr. Newman for his willingness to discuss juvenile justice issues and then asked who is responsible for the provision of aftercare services. Mr. Newman said that the DOC can be responsible for them. In response to Representative Crawford's comment that at \$195 a day, boot camps are too expensive in light of the fact that they don't seem to be effective, Mr. Newman stated that if boot camps don't ultimately save the system money, they don't work. He testified about an effective boot camp in Illinois where the offender chooses either to serve time in the more intense, shorter boot camp, or a longer sentence with DOC. Representative Villalpando reported that there are similar boot camps in Michigan.

Senator Long commented that there seems to be widespread support for a three-tiered system. Mr. Newman responded that it seems to be the best option, and suggested that it can include some juveniles who would be waived or directly referred to adult court, and that the patchwork quality of the current system would be simplified with a third tier. In response to a question from Senator Long about how many facilities would be needed with a third tier, Mr. Newman stated that it would depend on how broadly the legislative proposal would define it. He stated that when a draft is written, he would be happy to provide estimates of the number of offenders for each offense in Marion County. Mr. Newman closed his testimony by stating that a third tier would require a significant shift in resource allocation.

**Dr. Wanda Wallace Riesz**, Director of Alternative Education, Indianapolis Public Schools (IPS), discussed the link between family/domestic violence and subsequent violent behavior of juvenile offenders. She noted that middle school children are charged with weapons violations, and that because most youth crime occurs between 4:00 p.m. and 8:00 p.m., it doesn't make sense to require school children to only attend school until 2:30 p.m. Dr. Wallace Riesz testified that in response to these realities, she has developed a number of programs, including 48 Safe Haven schools, a bilingual kindergarten program that provides care to children from 7:30 a.m. to 6:30 p.m., 30 alternative schools, a fourth grade Peace Learning Center, and a Peace Camp in Bradford Woods. She reported that IPS has received a \$3 million school to work grant, but that the Safe Haven schools recently experienced a \$500,000 cut in funding.

Dr. Wallace Riesz stated that more flexibility and collaboration is needed between the juvenile justice system and schools. She stated that restorative justice shouldn't be mandated, but options for alternatives to the traditional methods of dealing with juvenile offenders should be offered. Dr. Wallace Riesz testified that it is difficult to offer preventive programming in light of the fact that children below sixth grade aren't counted for alternative funding. She requested more flexibility and collaboration between the juvenile code and schools. Senator Long asked if juvenile offenders should be required to attend alternative school after their release. Dr. Wallace Riesz responded affirmatively and stated that over 50% of those offenders released from the DOC return to Indianapolis. She also stated that Indiana should enact the mandatory ignition lock law statute as Massachusetts did recently. She also advocated enacting a statutory rape law and suggested that the laws of evidence regarding hearsay be altered to prevent the victim from recanting by allowing emergency medical personnel to testify about what the victim said about the crime. Dr. Wallace Riesz ended her testimony by requesting more before and after school programming.

**Roger Duvall**, Scott County Prosecutor, testified that as the prosecutor for a small community, he is personally familiar with the juvenile offenders and their families that come before the court. He explained that while he has a special interest in assuring the safety of the community, he also seeks to provide the best treatment and placement of juvenile offenders. Mr. Duvall commended the General Assembly for enacting juvenile laws that afford flexibility to prosecutors and judges in the disposition of offenders. He stressed the need for the system's intense involvement with the juvenile offender's family, so that when the juvenile returns to the

community he doesn't step back into the same family problems.

**Bill Glick**, Executive Director of the Indiana Juvenile Justice Task Force, Inc., testified that the current system is extremely fragmented. He stated that there is a need for blended sentencing and for the establishment of juvenile drug courts, in addition to the need to ensure that all juveniles are assessed for drug treatment if necessary. Mr. Glick expressed concern with the growing number of private detention centers springing up throughout the state. He stated his fear that some centers are built even when there aren't enough juvenile offenders to fill them. Mr. Glick advocated that counties be required to submit a certification of need before a center can be built in order to quell the philosophy of "if you build it, they will come". He advocated more legislative coordination, and noted the existence of three interim study committees with overlapping study areas (the Juvenile Law and Restorative Justice Committee, the Education Committee, and the Criminal Justice Issues Committee).

## **COMMITTEE DISCUSSION**

At 12:55 p.m., Representative Villalpando left for a 1:00 p.m. meeting with the Chief Justice of the Indiana Supreme Court. Senator Kenley assumed the role of Chairperson for the remainder of the meeting.

Representative Thompson began the discussion by predicting that DOC costs will spiral out of control unless Indiana takes a more proactive approach when dealing with juveniles. Senator Long requested that Committee members receive copies of the juvenile code from states that have recently revised their juvenile law, including Ohio, Illinois, Pennsylvania, and Iowa. Senator Kenley stated that he wants input from Judge Payne, Scott Newman and Roger Duvall on the legislation from other states. Representative Foley requested that legislation be obtained from states with a three-tiered system and that the Committee consider whether juveniles should have the right to a trial by jury.

Senator Ford stated that many incarcerated juveniles are very bright and their potential should not be wasted. He offered his support for the three-tiered system and more diversionary programs so that juvenile offenders can be handled systematically and kept out of the formal court system as much as possible. Senator Ford indicated that alternative dispute resolution (ADR) and mediation are alternatives that courts may be able to administer, but that the cost of such programs will have to be considered.

Senator Long suggested that the Committee members be polled on ideas about how to structure future meetings. Representative Budak requested data on recidivism rates for juvenile offenders who go through the boot camp setting from the DOC. She stated that juveniles should be scared when they come into the system for the first time.

## **ADJOURNMENT**

With no further business before the Committee, Senator Kenley adjourned the meeting at approximately 1:30 p.m.